

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

APPEAL NO.399 OF 2007
IN
NOTICE OF MOTION NO.3830 OF 2006
IN
SUIT NO.457 OF 2005

Balkishan D. Sanghvi .. Appellant.

Versus

Kiron D. Sanghvi & Others .. Respondents.

Mr.Janak Dwarkadas, senior counsel with mr.Birendra Saraf, Mr.Ashish Kamat, Mr.Vikram Trivedi, Mr.Sachin Chandarana & Ms.Rajalaxmi Nair, i/by M.K. Ambalal & Co. for the appellant.

Mr.Darshan Mehta i/by Dhruva Liladhar & Co. for respondent No.1.

Mr.Raju Subramaniam, senior counsel with Mr.N. Engineer i/by Zohair & Co. for respondent Nos.3 and 5.

Mr.A.Y. Bookwala, senior counsel with Mr.Munir Merchant for respondent No.7.

Mr.E.P. Bharucha, senior counsel with Mr.H.S. Veregaonkar for respondent Nos.8 to 12.

Mrs.Samindara Surve i/by Little & Co. for respondent No.2.

Ms.Mrudula Kadam i/by Vimadalal & Co. for respondent No.6.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 7TH SEPTEMBER, 2007.

P.C. :

1. The appellant who is original plaintiff, by the present appeal impugns the order of the learned Single Judge dated 8th December, 2006 whereby the

application for interim relief as prayed for has been dismissed.

2. The father of plaintiff expired on 18th March, 2002 and mother on 28th December, 2004. Plaintiff who is the son, has filed the suit for partition of the estate of his parents. Before the learned Single Judge what has come on record is that the suit was filed on the basis that both the parents died intestate. The defendant No.3 who is respondent No.3 herein has contended that the father has left behind a will. The learned Judge found that no steps have been taken for obtaining probate of the will left behind by the father. Similarly, the learned Judge found that the respondent No.3 has also contended that the mother has left behind a will and has filed a petition for obtaining probate of that will.

3. There is a property known as Wilson House. This property is in possession of respondent No.7, respondent No.3 and respondent No.5 as lessees. The lessees are in possession of the suit property since 2002 and the lease money is being paid by the lessees now to the estate of the deceased. Before this Court and before the learned single Judge, it was sought to be advanced that the lease deeds are invalid. The contention urged before us was that

the mother besides herself had also executed the lease deed on behalf of the husband as his Power of Attorney, which Power of Attorney was prepared subsequent to the signing of the lease deed. In our opinion, it is not necessary to go into the controversy at this stage considering the findings recorded by the learned Trial Judge to which finding we agree. As the respondent Nos.7, 3 and 5 have been inducted as lessees, it will not be open at this stage for this Court to appoint a Receiver as sought for and thereby dispossess them. Apart from that respondent No.3, 5 and 7 have made a statement before the learned Trial Judge to maintain status-quo in relation to that property (Wilson House) and that they will file an affidavit in this Court regarding creating of third party interest now and they agreed not to create any third party right in future and maintain status-quo until further orders of the Court. The learned Single Judge had asked the parties to file consent terms which admittedly the appellant were not agreeable to and in these circumstances, the learned Trial Judge refused to continue the interim relief granted earlier.

In our opinion, considering the submission made on behalf of respondent Nos.7, 3 and 5 before the learned Single Judge, which submission, learned

counsel reiterate before this Court, respondent Nos.7, 3 and 5 are directed to file an affidavit to maintain status-quo in terms of what is recorded in the order of the Trial Court and reiterated before this Court within a period of two weeks from today.

4. There are other properties both movable and immovable. In respect of these properties, except Ninad Bungalow, the parties who are in possession have agreed to maintain status-quo in relation to these properties including bank accounts and the shares in Demat Account. The counsel for respondents before this Court reiterate that they are willing to maintain status-quo. This statement to maintain status-quo to be set out in the affidavit to be filed by the parties who are in possession of the estates / properties within two weeks from today.

5. We then come to Ninad Bungalow. Ninad Bungalow was the subject matter of proceedings before the Registrar, Co-operative Societies, in the matter of effecting transfer in the record of the Society in favour of respondent No.3 pursuant to a gift deed. That gift deed before this Court is sought to be assailed on various grounds. The learned Judge found that respondent No.6 was a party to the proceedings before the Registrar,

Co-operative Societies and did not raise any objections that the mother was mentally unstable or of unsound mind. Similarly, the plaintiff herein who intervened in the proceedings did not raise any objections that the mother was mentally unstable or of unsound mind. The learned Judge has recorded a finding to that effect. Apart from that the learned Judge also recorded that the mother had travelled all the way to Nashik which is an indication as held by the learned Judge that she was not bed-ridden. Apart from that there is other evidence on record that she visited the Magistrate's Court in proceedings under Section 138 of the Negotiable Instruments Act. In our opinion, considering these findings of fact, we have no reason to take a view different from the view taken by the learned Single Judge. It will not be possible in the circumstances to grant any interim relief as prayed for by the appellant insofar as Ninad Bungalow is concerned and to that extent we do not find any fault in the conclusion arrived at by the learned Single Judge.

6. Once there are triable issues and further the Respondents have agreed to maintain status-quo in respect of the properties, except Ninad Bungalow, in our opinion, the direction for costs imposed on the plaintiff will have to be set aside with further direction that each party will have to bear their

own costs. In the light of that, the impugned order is partly modified to the following extent :

i) The respondents, other than respondent Nos.8 to 12 to file affidavit before this court to maintain status-quo of the properties which are in their respective possession and as indicated in the earlier part of the order.

ii) The costs imposed on the Appellant is set aside.

iii) Insofar as appeal is concerned, parties to bear their own costs.

7. The appeal stands disposed of in terms of this order.

(J.P. DEVADHAR, J.)

(F.I. REBELLO, J.)